

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TELLER, an individual,

Plaintiff,

vs.

GERARD DOGGE (p/k/a GERARD BAKARDY),
an individual,

Defendant.

Case No. 2:12-cv-00591-JCM-GWF

ORDER

Motion to Enforce Court's Order
(#116); Motion to Compel (#117)

This matter comes before the Court on Plaintiff's Emergency Motion to Enforce the Court's Order and to Compel (#116), filed on July 2, 2013. Defendant filed an Opposition (#129) on July 15, 2013. Plaintiff filed a Reply (#130) on July 18, 2013. This matter also comes before the Court on Defendant's Motion to Compel (#117), filed on July 5, 2013. Plaintiff filed a Response (#127) on July 12, 2013. The Court conducted a hearing on both Motions on July 26, 2013. *See Minutes of Proceedings, Doc. #134.*

At issue in this case is a video Defendant posted to YouTube ("Subject Video") of the performance of an illusion entitled "The Rose and her Shadow" ("Subject Illusion"), which Defendant also offered for sale. Plaintiff alleges the Subject Illusion infringes on Plaintiff's copyright. In his Motion (#116), Plaintiff seeks an order requiring YouTube to produce the Subject Video. The Court declines to enter such an order because Plaintiff has not properly issued a subpoena to YouTube, among the other reasons stated on the record at the July 26 hearing. Plaintiff further seeks the entry of a proposed Protective Order in this case. The Court has previously reviewed the Protective Order and ordered the parties to execute it for the Court's approval. *See June 14, 2013 Minute Order, Doc. #108.* Plaintiff now represents that Defendant

1 has refused to execute the Protective Order, which, for the reasons stated on the record, the Court
2 shall enter. Plaintiff also seeks production of certain materials he represents Defendant referenced
3 at his June 11, 2013 deposition. Namely, Plaintiff asserts that in addition to the Subject Video that
4 Defendant claims he has erased from his hard drive, Defendant has created a manual and DVD
5 relating to the sale and performance of the Subject Illusion. Plaintiff claims Defendant has refused
6 to produce these materials. The Court, therefore, shall again order Defendant to produce the
7 Subject Video, and to produce the manual and DVD referenced in his deposition.

8 In his Motion (#117), Defendant seeks production of the transcripts and video of his June
9 11, 2013 deposition. At the July 26 hearing, however, Defendant represented that he has received
10 the transcripts, and Plaintiff represented that he recently mailed to Defendant the video of the
11 deposition. Therefore, the Court finds that Defendant's Motion (#117) is moot. Accordingly,

12 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Enforce the Court's Order and to
13 Compel (#116) is **granted** in part and **denied** in part as follows:

- 14 (a) Plaintiff shall file the proposed Protective Order (attached to Letter, Doc. #107) for
15 the Court's approval within 7 days of the date of this Order;
- 16 (b) Defendant shall produce the Subject Video and the manual and DVD relating to the
17 sale and performance of the Subject Illusion referenced in his June 11, 2013
18 deposition on or before **August 9, 2013**;
- 19 (c) In the event Defendant does not or cannot timely produce all three materials above,
20 he shall produce his computer hard drive to Plaintiff for mirror imaging on or before
21 **August 9, 2013**;
- 22 (d) In the event such mirror imaging is necessary, the Court, on a motion by Plaintiff,
23 shall set forth the manner in which the mirror image shall be searched. In the
24 motion, Plaintiff shall identify the person or entity that will conduct the search, his
25 or her qualifications, and the safeguards that will ensure the search will only be
26 conducted to uncover the Subject Video, manual, and DVD relating to the Subject
27 Illusion; and

28 ...

1 (e) The Court further cautions Defendant that should he fail to comply with this
2 Order, the Court will impose sanctions that may include a recommendation
3 to the District Judge that his Answer be stricken and a default judgment be
4 entered against him.

5 **IT IS FURTHER ORDERED** that Defendant's Motion to Compel (#117) is **denied** as
6 moot.

7 DATED this 26th day of July, 2013.

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10 GEORGE FOLEY, JR.
11 United States Magistrate Judge
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